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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 001051

SIPDIS

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SUBJECT: TURKEY'S CONSTITUTIONAL COURT ANNULS HEADSCARF
AMENDMENTS

REF: ANKARA 0381

Classified By: Ambassador Ross Wilson for reasons 1.4(b),(d)

[¶1.](#) (C) Summary and comment. On June 5, Turkey's Constitutional Court annulled two constitutional amendments designed to lift the headscarf ban at universities and halted their implementation. The Court ruled that the amendments are inconsistent with "immutable" Constitutional provisions protecting Turkey as a secular state. Two appointees of Presiden Ozal, including Court President Hasim Kilic, were apparently outvoted by Sezer appointees. The decision is a major defeat for PM Erdogan. Many view it as an indicator of the outcome of the closure case against the ruling Justice and Development Party (AKP), with some seeing it as confirmation AKP is a center of anti-secularist activities and others suggesting this annulment will be sufficient to chasten AKP. By choosing to review the case on substantive rather than on procedural grounds alone, as specified in Constitution Article 148, the Court has further risked the judiciary's credibility, already suffering after last year's dubious 367-quorum ruling that derailed May 2007 presidential elections and forced early general elections. The Court's full reasoning is expected to be released next week but its preliminary statement makes clear it will be almost impossible to lift the headscarf ban, a change nearly 80% of Turks support. End summary and comment.

[¶2.](#) (U) By a nine-to-two vote, the 11-justice Court accepted the petition filed by the Republican People's Party (CHP) and Democratic Left Party (DSP) to annul controversial amendments to Constitution Articles 10 and 42 intended to lift Turkey's headscarf ban at universities. The Court's statement implied it had jurisdiction to review the amendments' substance, despite Constitution Article 148 limiting review of constitutional amendments to procedural issues only. In the Court's view, the headscarf amendments attempted to amend unalterable Article 2, which establishes Turkey as a secular state, and could not be allowed to stand. Chief Justice Hasim Kilic and Sacit Adali, the Court's two remaining Turgut Ozal appointees, reportedly voted against annulment, siding with a Court rapporteur's May recommendation.

[¶3.](#) (U) Some AKP parliamentairans called the ruling unconstitutional and a "coup by court robes." PM Erdogan, who has not spoken on this yet, cancelled plans to travel abroad and has convened the party's Central Administrative Board today. Many commentators link the outcome of this case to the pending AKP closure case, arguing annulment lends credence to the charges against the party and increases the likelihood the Court will close it. Others wager the annulment decision will serve as sufficient warning to AKP to

moderate its policies, making party closure and the resulting instability unnecessary. AKP's legal team, headed by Deputy Chairman Mehmet Dengir Mir Firat, met June 5 to review the party's options, including calling early general election; AKP MPs were instructed to remain in Ankara over the weekend.

AKP has been waiting for this issue to be decided before making its next submission in the closure case proceedings.

¶4. (SBU) Deputy PM Cemil Cicek, with a wry expression, told us June 5 that neither he nor others in AKP were surprised by the ruling. It was a legal decision which would be much disputed and discussed, but a legal decision nonetheless that must be respected. It was, he reiterated, no surprise.

¶5. (U) Initial reaction to the ruling was strong, with some commentators boldly accusing the Court of violating the constitution. Referring to an "April 27 process" that includes the TGS e-memorandum and the Court's dubious 367-quorum decision last year, Sabah's Ergun Babahan said the decision is part of an attempt to reshape Turkey through the judiciary. Islamist Zaman and Yeni Safak columnists said the Court disregarded the national will and the parliament in an attempt to carry Turkey's democracy, freedoms and individual rights backward. Other columnists supported the ruling and its defense of secularism. Some jurists complained the Court exceeded its authority and usurped the parliament's powers, but former Constitutional Court President Yekta Gungor Ozden said the Court "did its duty," producing a decision warning politicians not to play with the Constitution. Far-right Nationalist Action Party (MHP) leader Devlet Bahceli, whose party joined AKP in passing the headscarf amendments, called

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the Court's decision political, not legal. Parliament expressed the view of the nation by adopting the amendments, he said, adding it would be wrong to interpret a sincere effort as an act against the basic principles of the state. President Gul refrained from comment on what he termed a legal matter.

¶6. (U) CHP leader Deniz Baykal said government leaders should act with responsibility and avoid contradicting the constitution. DSP leader Zeki Sezer predicted AKP will pay the price for polarizing the country. Motherland Party (ANAVATAN) leader Erkan Mumcu said the decision shows once again the government's inability to solve Turkey's basic problems. At a symposium reception hosted by the Turkish General Staff (TGS), Chief of Defense General Buyukanit urged everyone to respect the Court's decision, calling the decision a "declaration of what is obvious." He rejected charges of a judicial coup, reiterating that Turkey is a secular, democratic, social state of law.

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